



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 02.12.2024

CWP No. 11523 of 1997(O&M)

Chand Singh

....Petitioner

VS.

**State of Punjab through Secretary Rehabilitation Department and
others**

....Respondents

CWP No. 2173 of 2021(O&M)

Jangitr Singh and another

....Petitioners

VS.

State of Punjab through and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. G.S. Punia, Senior Advocate with
Ms. Manleen Kaur, Advocate
for the petitioner (in CWP-11523-1997).
Mr. M.S. Joshi, Advocate
for the petitioners (in CWP-2173-2021 and
for respondent No. 7 in CWP-11523-1997).
Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (ORAL)

1. By this common order, CWP No. 11523 of 1997 and CWP No.
2173 of 2021 are hereby adjudicated as common questions of law and facts



are involved.

CWP- 11523 of 1997

2. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of orders dated 04.07.1991 (Annexure P-8) and dated 21.05.1997 (Annexure P-12) whereby Revenue Authorities have rejected his claim over the land in question on the ground that he is not complying with condition of continuous cultivating possession since Rabi 1984 onwards.

3. The petitioner-Chand Singh applied to Tehsildar (Sales), Faridkot for the transfer of agricultural land measuring 49 kanal 16 marla situated at village Khilchian, Tehsil and District Faridkot in response to Press Note issued by Rehabilitation Department, Punjab. The State Government by Press Note had invited applications from eligible occupants of rural evacuee land for transfer to the occupants on the basis of their continuous cultivating possession since Rabi 1984 onwards. The last date for filing application was 30.06.1988, however, by subsequent Press Note last date was extended to 31.01.1991.

3. The petitioner pursuant to afore-stated Press Note applied for evacuee land on 11.12.1990. His application came up for consideration before Tehsildar (Sales), Faridkot who vide order dated 04.07.1991 rejected his application.

The order dated 04.07.1991 passed by Tehsildar (Sales) reads as:-

“Above record and record was considered. The land in question is continuously vacant as per record.



According to the Government policy the above land in question could not be transfer. So the application is rejected. The applicant be informed.”

4. Feeling aggrieved from aforesaid order dated 04.07.1991, the petitioner preferred an appeal before Appellate Authority which came to be dismissed by Sales Commissioner, Faridkot on the ground that he was not eligible for transfer of land in his possession in view of Government Instructions. He formed an opinion that petitioner has not sown the area since Khariff 1983 and area in his possession had remained vacant. The petitioner further preferred appeal before Deputy Commissioner-cum-Chief Sales Commissioner, Faridkot who upheld order of authorities below. He preferred revision before Commissioner, Ferozepur Division, Ferozepur who also dismissed his petition vide order dated 01.08.1994. He further preferred revision before Financial Commissioner Appeals-I, Punjab who vide order dated 21.05.1997 dismissed his revision. The relevant extracts of order dated 21.05.1997 are reproduced as below:-

“After careful consideration of the facts and circumstances of the case, and, after perusal of the record, I am of the view, that, the present petition has no merit at all; and, the same deserves to be rejected. In this case, all the four Officers below, in their concurrent findings, have come to a very categorical conclusion, that, the petitioner Chand Singh is not eligible for the transfer of the said land, because, he does not fulfil the basic condition of being in continuous cultivating possession of the land in his possession, since Rabi 1984 onwards; and, as such, his claim for the transfer of land has rightly been rejected by the Tehsildar (Sales),



Faridkot; and, the higher Sales Authorities have rightly rejected the appeals/revision petition, filed by the petitioner Chand Singh. The impugned orders do not suffer from any illegality or irregularity, which may call for interference, at this stage.

In view of the above, the present revision petition is rejected.”

5. Mr. G.S.Punia, Senior Advocate submits that statutory provisions require that petitioner should be in continuous cultivating possession and he is in possession of land in question since 1955. During consolidation, the petitioner was allotted a different pieces of land on the basis of value of land already possessed by him. He undisputedly is in the possession of land but could not yield crop because land is Barani and it is difficult to get crop every year. In previous years, he obtained crops of wheat and gawar but he could not get crop during few years preceding the date of his application.

6. *Per contra*, counsel for private respondent as well as learned State counsel submit that Rules 2(c) and 3 of The Punjab Package Deal Properties (Disposal) Rules, 1976 (for short “1976 Rules”) clearly provide that applicant should be in cultivating possession which means continuous cultivating possession. It is undisputed that since 1983, the petitioner was in possession of land, however, he was not cultivating the land and as per revenue record submitted by him, the land was lying vacant and on the ground of non-sowing crop for the last eight seasons, it was declared as Banjar land.



7. I have heard counsel for the parties and perused the record with their able assistance.

8. The petitioner is claiming transfer of 49 Kanal 16 Marla land on the ground of being occupant. Section 4 of Punjab Package Deal Properties (Disposal) Act, 1976 (in short “1976 Act”) provides that subject to any Rules that are made under 1976 Act, the Revenue Officer may transfer any package deal property by sale to such class of occupants and at such price as specifically made by general or special order. The land may also be transferred by way of public auction or other modes as specified in the said Section. The relevant extracts of Section 4 of 1976 Act are reproduced as below:-

“4. Power to transfer package deal property.- (1) Subject to any rules that may be made under this Act, the Tehsildar (Sales) or Naib-Tehsildar (Sales) may transfer any package deal property -

- (a) by sale by public auction;*
- (b) by sale by auction restricted to socially and educationally, Backward Classes of citizens notified by the State Government from time to time or to the members of the Scheduled Castes;*
- (c) by sale to such class of occupants and at such price as the State Government may by general or special order specify;*
- (d) by sale to any co-operative society, Government company or local authority or to any corporate body for a public purpose;*
- (e) by lease on such terms and conditions as may be prescribed;*



(f) *in such other manner as may be prescribed :*

Provided that, except in the case of a sale under clause (d), the maximum area that may be transferred to any person, including the area, if any, already owned by him, shall not exceed five standard acres or ten ordinary acres whichever may be less :

Provided further that no transfer shall be made Benami.”

9. The State Government has framed 1976 Rules. Under Rule 2(c), the expression ‘cultivating possession’ has been defined which reads as below:-

“ (c) “*cultivating possession*” means continuous cultivating possession established by the entries in the revenue record;”

10. Rule 3 deals with transfer of land in rural area. Sub-rule (1) of Rule 3 prescribes eligibility criteria and sub-rule (2) expressly inhibits persons from making application for the transfer of land. The relevant extracts of Rule 3 of 1976 Rules are reproduced as below:-

“3. Transfer of land in rural area.- (1) *Persons entitled to make applications for the transfer of land, on the basis of possession -An application for the transfer of land which is rural property, as and when invited by Government, may be made by a person whose own holding is less than ten ordinary acres and who is an occupant of such property, or who is a landless agriculturist or who is such other landless occupant or belongs to such class of occupant, as may be notified by the Government from time to time:*

Provided that the applicant -

(i) *is head of the family;*



(ii) is a self tiller;

Explanation.- A widow who is occupant and is getting the land cultivated by her son(s) or by employing servant(s), or otherwise shall be considered as self-tiller.

(iii) is in continuous and undisputed cultivating possession of the land from the crop that may be prescribed by the State Government from time to time; and

(iv) has applied for the transfer of land occupied by him on or before the date, as may be prescribed by the State Government, from time to time.

(2) Persons not entitled to make applications for the transfer of the land - An occupant shall not be entitled to apply if:-

(i) he is a minor, provided he is not a legal heir of an occupant who has died after making an application by the prescribed date;

(ii) he is an allottee or vendee of land, the allotment or transfer whereof has been cancelled on the grounds of fraud, misrepresentation of facts or otherwise;

(iii) she is a woman, whose husband is alive but is not disabled or incapacitated;

(iv) he has already purchased surplus rural evacuee agriculture land on the basis of possession or in restricted auction and has disposed of the same, or has ceased to be entitled to hold the land by reasons of default in the terms and conditions of the transfer or sale;

(v) he is an employee of the State Government or is a member of the family of such an employee, except with the prior permission of the State Government in case of a gazetted Government employee and of



the Deputy Commissioner of the district in which the property is situated in the case of a Government employee other than a gazetted Government employee.”

11. From the perusal of relevant statutory provisions, it cannot be culled out that a person occupying land must be sowing crop from a particular year and for a particular period. The petitioner is claiming possession since 1955 and respondent is rejecting his claim on the ground that he is not sowing crop since 1983. The respondent has relied upon Instructions dated 19.07.1991 whereas petitioner applied for transfer on 11.12.1990, thus, there was no question of application of Instructions dated 19.07.1991. Despite multiple opportunities, none of the parties has placed on record Instructions dated 19.07.1991. In any case, the Instructions cannot run contrary to statutory provisions. 1976 Act clearly provides that land would be disposed of subject to the Rules made by Government. The State Government has made 1976 Rules which are explicit. In Rule 3 of 1976 Rules, it has been clearly provided that who may and may not be the applicant, the area which can be allotted and conditions of allotment. Thus, matter is hereby adjudicated without instructions and relying upon statutory provisions.

12. From the perusal of Rule 3 read with Rule 2(c) of 1976 Rules, it is evident that a person may apply for allotment of land if he is in continuous possession of land. The respondent is claiming that petitioner is in continuous possession of land but he is not cultivating it, thus, he cannot be called as person having continuous cultivating possession. The continuous cultivating possession means a person is actually cultivating the land. He



must establish his intention to utilize the land for agricultural purpose. If the land is lying vacant he cannot be called as a person in continuous cultivating possession. Mere possession is not sufficient, the applicant must also be cultivating the land.

13. From the perusal of revenue record, it is evident that there were few years when land was actually utilized for sowing crop. There was yield, however, there were many years preceding the date of application when land was not subjected to sowing seeds and there was no crop. The possession is not disputed and the only ground of denial is that there was no yield. The petitioner did not get crop from the land in his possession. The land, as per revenue record, was Banjar and even on account of non-realization of crop for last eight seasons, it was declared as Banjar land. The intent and purport of 1976 Act and 1976 Rules is to allot land by way of different means to different persons including persons who are in possession of land. A person who is holding possession of land for the last 4-5 decades should be given preference than anybody else. There is no free allotment whereas occupant has to pay consideration as fixed by State Government. The petitioner has realized crop in few years and there is no allegation or evidence on record that land was utilized for any other purpose. The only allegation is that land was lying vacant and it was not used to sow crop. If the land was Banjar or Barani and is not utilized for any other purpose, it cannot be concluded that petitioner was not in continuous cultivating possession and he is not entitled to allotment of land.

14. In the wake of above discussion and findings, the impugned orders dated 04.07.1991 (Annexure P-8) and dated 21.05.1997 (Annexure



P-12) deserve to be set aside and accordingly set aside. The petition is hereby allowed.

CWP- 2173 of 2021

15. In view of above order passed in CWP-11523 of 1997, the instant petition has rendered infructuous, however, the petitioners are at liberty to approach the authorities for the allotment of alternative land.

16. Disposed of as having rendered infructuous with liberty as afore-said.

17. Pending Misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)

JUDGE

02.12.2024
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:		No